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July 24, 2006

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case:	Personnel Security Hearing
Date of Filing:	January 20, 2006
Case Number:	TSO-0341

This Decision concerns the continued eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored at this time.

I. Background

The individual is employed by a DOE contractor and held a security clearance at the contractor's request. The individual informed DOE of an alcohol-related arrest. In order to resolve the security concern arising from the arrest, DOE conducted a Personnel Security Interview (PSI) with the individual in September 2004. The PSI did not resolve the concern, and in May 2005, a DOE consultant-psychiatrist evaluated the individual. The psychiatrist diagnosed him as suffering from alcohol abuse, without adequate evidence of rehabilitation or reformation.

In August 2005, DOE informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his continued eligibility for access authorization. Notification Letter (August 12, 2005). The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (h) and (j) (Criteria H and J). DOE invoked Criterion H based on information in its possession that the individual has an illness or mental condition that causes or may cause a significant defect in his judgment or reliability. Notification Letter at 4. The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. 10 C.F.R. § 710.8 (j). In this regard, the Notification Letter cites the diagnosis of the DOE consultant-psychiatrist that the individual suffers from alcohol abuse, which in the opinion of the DOE consultant-psychiatrist is an illness or mental condition that causes or may cause a significant defect in the individual's judgment or reliability. 10 C.F.R. § 710.8 (h).

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call two friends as witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored at this time because I cannot conclude that such a restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

In 1989, the individual was arrested for driving while intoxicated (DWI) and served six days in jail, had his license suspended for six months and attended a first offender DWI school for six months. Ex. 25 at 11. In 1995, he was hired by a DOE contractor, who requested a security clearance for the individual. A PSI in 1996 resolved the security concerns raised by the 1989 DWI and his clearance was granted in July 1996. Ex. 2. In 1998, he was

arrested for DWI again, and with a blood alcohol content (BAC) of .13. He paid a fine and attended DWI school. The concerns arising from this incident were resolved during a 1999 PSI where he stated that he would not drink and drive ever again. Ex. 27 at 18. However, in April 2004, he was arrested again for DWI with a BAC of .08. Ex. 25 at 7. DOE conducted a PSI in September 2004 to discuss the third DWI and his alcohol consumption.

Ex. 25. During his 2004 PSI, the individual stated that he did not think he had a problem with alcohol and he had never attempted to stop drinking. PSI 2004 at 15; Ex. 13 at 4.

In May 2005, a DOE consultant-psychiatrist interviewed the individual for approximately one and one-half hours and completed a report of the interview for the record. Ex. 13 (Report). In his evaluation report, the psychiatrist concluded that the individual met two criteria for alcohol abuse (recurrent substance use in physically hazardous situations and recurrent substance-related legal problems). Report at 10. In addition, the individual's alcohol abuse is an illness that causes or may cause a significant defect in the individual's judgment or reliability. *Id.* at 12. He also concluded that the individual was a user of alcohol habitually to excess in 1988-1989, 1995, 1996-2000, 2003, and 2004. *Id.* at 10. The individual, who continued to drink alcohol, did not present adequate evidence of rehabilitation or reformation. *Id.* at 11. In order to show adequate evidence of rehabilitation from this condition, the DOE psychiatrist recommended in his report that the individual either: (1) attend Alcoholics Anonymous (AA) with a sponsor at least once a week for a minimum of 100 hours in a year and abstain from alcohol for two years; or (2) complete a six-month alcohol treatment program and abstain for three years. *Id.* In order to demonstrate reformation from alcohol abuse, the individual must abstain for five years, or abstain for two or three years if he attends one of the two rehabilitation programs. *Id.*

B. DOE's Security Concerns

The excessive use of alcohol raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Hearing*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). In this case, the individual was diagnosed by a DOE psychiatrist as suffering from alcohol abuse and has a history of alcohol-related arrests. Therefore, DOE's security concerns are valid and the agency has properly invoked Criteria H and J in this case.

C. Hearing Testimony

1. The DOE Psychiatrist

The DOE psychiatrist testified at the beginning of the hearing that he had reviewed the individual's file prior to the May 2005 interview. Tr. at 10. According to the DOE psychiatrist, the individual met two criteria for alcohol abuse. Tr. at 12-13, 16-17. Even though the individual's arrests were more than one year apart and two were not recent, the psychiatrist found that the individual still met the DSM-IV qualifications for alcohol abuse

because of his legal problems --a pattern of alcohol-related arrests from 1989 to 2004. *Id.* at 12, 15. The DOE psychiatrist also found that the individual drank habitually to excess in 1988-1989, 1995, 1996-2000, 2003, and 2004. *Id.* at 10. The individual was still drinking alcohol at the time of the interview, and did not think that he had an alcohol problem. *Id.* at 11. In order to show adequate evidence of rehabilitation, the DOE psychiatrist recommended that the individual attend Alcoholics Anonymous (AA) for 100 hours and abstain from alcohol for two years, or attend a six month alcohol treatment program and abstain for two years. *Id.* at 13-14. In order to show reformation, the individual must abstain for five years. *Id.* at 13.

2. Other Witnesses

As evidence of rehabilitation and reformation, the individual presented the testimony of two friends. The first friend has known the individual for 20 years, since high school, and now sees him almost daily. They work together in the evenings. He has not seen the individual drink in one year, and knows that the individual does not keep alcohol at home. Tr. at 35-39. The second witness has known the individual for two years and sees him once or twice per week. He last saw the individual drink two years ago, and has not seen alcohol at his home. He testified that he has observed the individual when he is in the company of friends who are drinking alcohol, and the individual appears comfortable with his decision to abstain. *Id.* at 40-45.

3. The Individual

The individual testified that after his last DWI, he realized that his drinking was causing problems, because “most people don’t get three DWIs, much less one in their lifetime. . .” Tr. at 19. Despite this insight, he continued to drink after the 2004 DWI because he enjoyed having a drink socially with friends. *Id.* at 19-20. In fact, he had last consumed alcohol approximately one week prior to his psychiatric evaluation. *Id.* at 21. However, the individual testified that he no longer drives any vehicle after drinking. *Id.* at 25-26. After talking to the DOE psychiatrist, he realized that even the reduced amount of alcohol that he drank after the 2004 DWI could be considered “drinking habitually to excess,” and he stopped drinking. *Id.* at 20, 25-26. According to the individual, the DOE psychiatrist recommended only one year of sobriety. He has not attended AA or any other treatment program because he works full time during the day and also runs a business on the side, leaving him with very little free time. *Id.* at 22. The individual now realizes that he has an alcohol problem and he no longer keeps alcohol in his house. *Id.* at 21-22. He socializes with the same friends he had while he was drinking and still goes to bars with them, but they are supportive of his abstinence. *Id.*

D. Evidence of Rehabilitation and Reformation

The individual has not attended any treatment program, but alleges that he has abstained from alcohol for one year. In addition, his witnesses testified credibly that the individual has not consumed alcohol in one year. Nonetheless, the psychiatrist listened to the testimony during the hearing and concluded that although the individual has been abstinent for one year and now has good insight into his alcohol problem, without any alcohol

treatment he has not presented adequate evidence of rehabilitation or reformation from the diagnosis of alcohol abuse.

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, only one mental health expert, the DOE psychiatrist, testified and he found that the individual did not present adequate evidence of rehabilitation or reformation. The psychiatrist argues that there is a big risk of relapse without treatment, given the individual's pattern of alcohol-related legal problems. Tr. at 47-51.

After evaluating the evidence in this case, I find that the individual has not mitigated the security concerns of Criteria H or J. 10 C.F.R. § 710.8 (h) and (j). To his credit, there is no evidence in the record to dispute his contention that he has abstained from alcohol for one year. The individual now demonstrates a healthy attitude towards rehabilitating himself from alcohol abuse. He seems to have reflected on the information in the Report and arrived at an understanding of the negative effects of his alcohol consumption. Nonetheless, I agree with the psychiatrist that given the multiple alcohol-related arrests and the absence of any alcohol treatment, DOE's valid security concerns are still present. Even though the individual has a very busy schedule, AA meetings are held at different times during the day to accommodate busy people. At this time, he has not demonstrated an understanding of the importance of AA in rehabilitation or reformation. In addition, the individual has an increased risk of relapse as he continues to socialize with friends that drink and accompany these friends to bars. Thus, in view of Criteria H and J and the record before me, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: July 24, 2006